



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET- SUITE 200
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

September 26, 2006

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rick Folden
Mountrail County
Van Hook Park
P.O. Box 69
Stanley, ND 58784

Re: In the Matter of Mountrail County – Van Hook Park
Docket No. **RCRA-08-2006-0005**
Administrative Complaint, Compliance Order and Notice of
Opportunity for Hearing

Dear Mr. Folden:

Enclosed is an Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") filed by the U.S. Environmental Protection Agency ("EPA") against Mountrail County pursuant to its authority under section 9006 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6991e. EPA alleges in the Complaint that Mountrail County's Van Hook Park facility in New Town, North Dakota violated the underground storage tank ("UST") requirements set forth at 40 C.F.R. part 280, subpart G.

Specifically, the Complaint alleges that Mountrail County violated RCRA section 9003(c), 42 U.S.C. §6991b(c), and the regulations at 40 C.F.R. §§280.71(a) and 280.72(a) requiring (1) the notification of a tank closure and (2) the performance of a site assessment at a tank closure. The violations were discovered during a scheduled inspection of the Van Hook Park facility on June 7, 2005. The Complaint proposes a total penalty of \$24,166 for the alleged violations.

The Compliance Order requires Mountrail County to perform a closure site assessment as required by the regulations at 40 C.F.R. §280.72(a) within 45 days of receipt of the Complaint and submit the results to EPA with 15 days after completion of the assessment. In the event that

Mountrail County has already performed a closure site assessment the results of that assessment must be submitted to EPA within 15 days of receipt of the Complaint.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or the allegations are found to be true after you have had an opportunity for a hearing, you have the right to contest the penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for your review. Please note the requirements for an answer set forth in 40 C.F.R. §§22.15 and 22.38. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file a written answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

If you fail to request a hearing, you will waive your right to formally contest any of the allegations set forth in the Complaint. If you fail to file a written answer or pay the proposed penalty within the time limits, a default judgement may be entered pursuant to 40 C.F.R. §22.17. This judgment may impose the penalty proposed in the Complaint.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing your Answer and/or requesting a hearing.

If you have any questions, the most knowledgeable people at EPA regarding this matter are Richard H. Baird and Francisca Chambus. Mr. Baird is in our Legal Enforcement Program and can be reached at (303) 312-6642. Ms. Chambus is in our UST Program and can be reached at (303) 312-6782.

We urge your prompt attention to this matter.

Sincerely,

SIGNED

Sharon Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Enclosures: Complaint and Notice of Opportunity for Hearing
Consolidated Rules of Practice, 40 C.F.R. Part 22
Notice of SEC Disclosure

cc: Richard H. Baird, Esq., 8ENF-L
Francisca Chambus, 8P-W-GW
Brenda Cazier, 8ENF-PT



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	Docket No. RCRA-08-2006-0005
)	
Mountrail County)	COMPLAINT, COMPLIANCE ORDER,
P.O. Box 69)	AND NOTICE OF OPPORTUNITY
Stanley, ND 58784)	FOR HEARING
)	
Van Hook Park Facility)	Proceeding under Section 9006 of the
)	Resource Conservation and Recovery Act
Respondent.)	
_____)	

AUTHORITY

This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by Section 9006 of the Solid Waste Disposal Act as amended by, and hereafter referred to as, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6991e. The Administrator has properly delegated this authority to the undersigned EPA officials. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") set forth at 40 C.F.R. part 22, a copy of which is enclosed.

GENERAL ALLEGATIONS

1. Subtitle I of RCRA, RCRA §§9001 - 9010, 42 U.S.C. §§6991 - 6991i, authorizes EPA to regulate the installation and use of "underground storage tanks" which contain "regulated substances."

2. EPA has jurisdiction over this matter pursuant to RCRA §9006, 42 U.S.C. §6991e and is authorized to issue an order assessing a civil penalty for any past or current violation, requiring compliance, or both, or to commence a civil action for appropriate relief in the United States District Court upon determining that any person has violated or is in violation of any requirement of the subchapter.

3. Section 9003(c) of RCRA, 42 U.S.C. §6991b(c), authorizes EPA to promulgate regulations for underground storage tanks setting forth requirements including, but not limited to, the closure of underground storage tanks to prevent future releases of regulated substances into the environment. EPA has promulgated such regulations at 40 C.F.R. Part 280, subpart G.

4. Petroleum and any fraction thereof including, but not limited to, gasoline is a regulated substance as defined at RCRA §9001(2), 42 U.S.C. § 6991(2).

5. EPA is the “implementing agency” as that term is used at 40 C.F.R. §280.12.

6. Respondent Mountrail County is a “person”, as defined by section 1004(15) of RCRA, 42 U.S.C. §6903(15), and “owner” or “operator” within the respective meanings of RCRA §§9001(3) and (4), 42 U.S.C. §§6991(3) and (4), and 40 C.F.R. § 280.12, of an “underground storage tank system” (“UST” or “tank”) as defined by RCRA §9001(1), 42 U.S.C. §6991(1), and 40 C.F.R. §280.12.

7. Respondent owns and operates a convenience store and gas station located at 1801 Van Hook, New Town, North Dakota (the “Facility”) within the exterior boundaries of the Three Affiliated Tribes on the Fort Berthold Reservation.. The Facility had installed one 2000 gallon STIP3 tank containing unleaded gasoline (“Tank 1”) and one 1000 gallon STIP3 tank containing

premium gasoline (“Tank 2”) in 1988.

8. On September 2, 2003 Ms. Lisa Luebke, UST Enforcement Coordinator for EPA Region 8, had a conversation with Rick Folden, Respondent’s manager for the Facility, regarding a UST cathodic corrosion protection test. During the conversation Mr. Folden told Ms. Luebke that Respondent intended to remove Tank 1 and Tank 2 from the Facility sometime during that fall. Ms. Luebke informed Mr. Folden of the requirement to notify EPA 30 days prior to removing the tanks. Following the conversation Ms. Luebke sent Mr. Folden an EPA 30-day Notification Packet which contains the requirements for tank removals including, but not limited to, the notification requirement and the requirement regarding tank closure site assessments.

9. On May 31, 2005 EPA inspector Chris Guzzetti contacted Clarence Weltz, Facility representative, and provided him with advance notice of a planned UST inspection at the Facility. During the conversation Mr. Weltz informed Mr. Guzzetti that the USTs at the Facility had been removed and replaced with an aboveground storage tank. Mr. Guzzetti then informed Mr. Weltz that he would be conducting a tank closure inspection at the Facility to ensure that the UST system had been closed in accordance with the regulatory requirements.

10. On June 7, 2005 EPA inspector Chris Guzzetti and Delvin Wolf, UST Technician of the Three Affiliated Tribes (the “Inspectors”) conducted an inspection at the Facility to determine compliance with RCRA Subtitle I and the EPA regulations at 40 C.F.R. Part 280. Mr. Weltz met the Inspectors, consented to the inspection and signed EPA’s Notice of Inspection.

12. During the inspection Mr. Weltz stated that Tank 1 and Tank 2 had been removed in September 2003. Mr. Guzzetti asked Mr. Weltz if Respondent had notified EPA, the State of North Dakota or any agency prior to removing the tanks and whether any tank closure site

assessment work had been performed. Mr. Weltz replied that no prior notification had been given prior to removing the tanks and that no tank closure site assessment work had been done by Respondent.

Count 1
(Failure to Notify of Tank Closure)

13. Pursuant to 40 C.F.R. §280.71(a) owners and operators of an underground storage tank must give at least 30 days notice to the agency responsible for implementing the UST requirements prior to permanent closure of the tank.

14. Respondent failed to provide the 30 day notice prior to removing and closing Tank 1 and Tank 2 from the Facility.

15. Respondent's failure to provide the required 30 day notice before removing and closing Tank 1 and Tank 2 from the Facility is a violation of RCRA Section 9003(c), 42 U.S.C. §6991b(c), and 40 C.F.R. §280.71(a).

Count 2
(Failure to Perform a Site Assessment)

16. Pursuant to 40 C.F.R. §280.72(a) owners and operators of an underground storage tank are required to perform a site assessment to measure for the presence of a release of a regulated substance before completing the closure and removal of a UST.

17. Respondent failed to perform a site assessment at the Facility to measure for the presence of a release of gasoline before completing the removal and closure of Tank 1 and Tank 2.

18. Respondent's failure to perform the required site assessment at the Facility before completing the removal and closure of Tank 1 and Tank 2 is a violation of RCRA Section

9003(c), 42 U.S.C. §6991b(c), and 40 C.F.R. §280.71(a).

PROPOSED CIVIL PENALTY

RCRA §9006(d)(2), 42 U.S.C. §6991e(d)(2), and 40 C.F.R. §19.4 authorizes the assessment of a civil penalty of up to \$11,000 for each tank for each day of violation during which the violation continues. Based upon the facts alleged in this Complaint and taking into account the factors prescribed by statute, i.e., the seriousness of the violations and any good faith efforts by Respondent to comply with the applicable requirements, Complainant proposes to assess a civil penalty of \$24,166 as follows:

<u>COUNT</u>	<u>VIOLATION</u>	<u>PROPOSED PENALTY</u>
Count 1	Failure to notify implementing agency of intent to permanently close tanks. 40 C.F.R. § 280.71(a)	\$7875
Count 2	Failure to perform a site assessment at tank closure. 40 C.F.R. § 280.72(a)	\$16291
TOTAL PROPOSED PENALTY:		\$24,166

The proposed civil administrative penalty above has been calculated in accordance with the U.S. EPA Penalty Guidance for Violations of UST Regulations (November 1990) (Exhibit 1).

This policy is used by EPA to provide a rational and consistent application of the statutory factors to the facts and circumstances of a specific case. The Penalty Calculation Worksheets for the alleged RCRA UST violation in support of the assessment of civil penalties proposed in this Complaint are attached hereto (Exhibit 2).

TERMS OF PAYMENT

If Respondent does not contest the findings and penalty proposal set forth above, this action may be resolved by paying the proposed penalty in full. If such payment is made within thirty (30) calendar days of receipt of this Complaint, then no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within thirty (30) days of receipt of the Complaint, then pay the money within sixty (60) days of such receipt. Payment is to be made by sending a certified or cashier's check payable to "Treasurer, United States of America," to:

EPA Region 8
(Regional Hearing Clerk)
Mellon Bank
P.O. Box 360859M
Pittsburgh, PA 15251

A copy of the check must be mailed simultaneously to:

Richard H. Baird, Senior Enforcement Attorney
Legal Enforcement Program
U.S. EPA Region 8 (8ENF-L)
999 - 18th Street, Suite 300
Denver, Colorado 80202-2466

Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

COMPLIANCE ORDER

Based upon the allegations above, and pursuant to Section 9006 of RCRA, 42 U.S.C. §6991e, Respondent is hereby ORDERED as follows:

1. To immediately comply with RCRA and its implementing regulations including,

but not limited to, those requirements set forth in 40 C.F.R. Part 280, and those requirements specifically required in this Compliance Order (“Order”) section of the Complaint.

2. Within 45 days of receipt of this Order to perform the closure site assessment required by 40 C.F.R. §280.72(a) for those areas where Tank 1 and Tank 2 were located, utilizing a qualified testing company or contractor.

3. Within 15 days after completion of the closure site assessment required in paragraph 2 above, submit to EPA the report detailing the findings of the site assessment. This report should be mailed to:

Francisca Chambus, 8P-W-GW
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202-2466

4. In the event that Respondent has completed the closure site assessment required in paragraph 2 above prior to receipt of this Order, Respondent shall mail such report to EPA as specified in paragraph 3 above within 15 days of receipt of this Order.

POTENTIAL LIABILITY FOR ADDITIONAL PENALTIES

Pursuant to Section 9006 of RCRA, 42 U.S.C. §6991(e), respondents who fail to achieve compliance within the time specified in a compliance order are liable for an additional civil penalty of up to \$32,500 for each day of continued noncompliance.

OPPORTUNITY TO REQUEST A HEARING

As provided in RCRA §9006(b), 42 U.S.C. §6991e(b), a respondent has the right to request a public hearing within thirty (30) calendar days after this Complaint is served. If you (1) contest the factual claims made in this Complaint; (2) wish to contest the appropriateness of the proposed penalty; or (3) assert that you are entitled to judgment as a matter of law, you must file

a written Answer in accordance with 40 C.F.R §§22.15 and 22.37 within thirty (30) calendar days after this Complaint is received.

Your answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint; (2) state all facts and circumstances, if any, which constitute grounds for defense; (3) state the facts intended to be placed at issue; and (4) specifically request an administrative hearing, if desired. The denial of any material fact or the raising of any affirmative defense in your Answer shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes an admission of the undenied allegations.

The answer and one copy must be sent to the EPA Region 8 Regional Hearing Clerk (8RC), 999 - 18th Street, Suite 300, Denver, Colorado 80202-2466, and a copy must be sent to the enforcement attorney listed below.

IF YOU FAIL TO REQUEST A HEARING, YOU MAY WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

SETTLEMENT CONFERENCE

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set forth above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. Part 22. If a settlement can be reached, its terms shall be

expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the regional judicial officer. A request for a settlement conference or any questions that you may have regarding this Complaint should be directed to the attorney listed below.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 25 September 2006

By: SIGNED dji
Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program

Date: 25 September 2006

By: SIGNED
Sharon L. Kercher, Director
Technical Enforcement Program

Date: September 25, 2006

By: SIGNED
Richard H. Baird, Senior Enforcement Attorney
U.S. EPA, Region 8
999 18th Street, Suite 300 (8ENF-L)
Denver, CO 80202-2466
Colorado Atty. Reg. No. 29718
Telephone: 303/312-6642
Facsimile: 303/312-6953

Exhibits

Exhibit 1 – U.S. EPA Penalty Guidance for Violations of UST Regulations (November 1990)

Exhibit 2 – Penalty Calculation Worksheets

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits 1 and 2 were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was mailed by certified mail to:

Rick Folden
Mountrail County
P.O. Box 69
Stanley, ND 58784

9/26/06 _____
Date

Judith M. McTernan _____
Signature

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON SEPTEMBER 26, 2006.